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6 | Attorneys for Defendants
GOOGLE INC. and ORKUT.COM LLC

22 Defendants Google Inc. and Orkut.com LLC (“Defendants”) by and through their
23 attorneys, hereby answer the unverified complaint filed by plaintiff Affinity Engines, Inc.
24 (“AEI”) as follows:

GENERAL DENIAL

26 Pursuant to Section 431.30(d) of the California Code of Civil Procedure, Defendants
27 generally deny each and every material allegation contained in AEI's unverified complaint.
28 Defendants further deny that AEI has been damaged in the sum alleged, in any other sum, or at

1 all, by reason of any act or omission on the part of Defendants, and denies that AEI is entitled to
2 any relief whatsoever by reason of its complaint.

3 **AFFIRMATIVE DEFENSES**

4 Without waiving the foregoing answer, Defendants' assert the following separate
5 affirmative defenses:

6 **First Affirmative Defense**

7 (Estoppel)

8 The complaint, and each and every purported cause of action contained therein, is barred
9 by the doctrine of estoppel.

10 **Second Affirmative Defense**

11 (Waiver)

12 The complaint, and each and every purported cause of action contained therein, is barred
13 by the doctrine of waiver.

14 **Third Affirmative Defense**

15 (Laches)

16 The complaint, and each and every purported cause of action contained therein, is barred
17 by the doctrine of laches.

18 **Fourth Affirmative Defense**

19 (Unclean Hands)

20 The complaint, and each and every purported cause of action contained therein, is barred
21 because AEI has unclean hands.

22 **Fifth Affirmative Defense**

23 (Privilege)

24 The complaint, and each and every purported cause of action contained therein, is barred
25 because Defendants' actions were privileged and justified and, among other things, fell within
26 the competition privilege.

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Sixth Affirmative Defense

(Mitigation of Damages)

Without admitting that AEI has been injured or damaged in any manner or amount whatsoever, AEI is not entitled to recover for its damages, if any, because it has failed, and continues to fail, to act reasonably to mitigate its alleged damages as required by law.

Seventh Affirmative Defense

(UTSA Preemption)

8 To the extent that UTSA preemption is an affirmative defense, AEI's causes of action for
9 common law misappropriation, conversion, common law unfair competition, and statutory unfair
10 competition are preempted by California's Uniform Trade Secrets Act.

Eighth Affirmative Defense

(Copyright Preemption)

13 To the extent that copyright preemption is an affirmative defense, AEI's complaint is
14 barred in whole or part by the federal copyright statutes.

Ninth Affirmative Defense

(Statute of Limitations)

17 The maintenance of this action is barred to the extent that AEI seeks relief for any
18 purported claims that did not accrue within the applicable limitations period.

Tenth Affirmative Defense

(Failure to State a Claim)

21 The complaint, and each of its purported causes of action, fail to state facts sufficient to
22 constitute a claim upon which relief can be granted against Defendants.

Eleventh Affirmative Defense

(Comparative Fault)

25 To the extent that AEI did sustain any damages, which Defendants deny, such damages
26 were caused, in whole or in part, by AEI's comparative fault, which thus bars AEI's recovery for
27 said damages or diminishes such recovery by the amount of fault attributable to AEI.

Twelfth Affirmative Defense

(Misconduct of Others)

To the extent AEI has suffered any injury or damage, which Defendants deny, such injury or damage was caused by the actions or conduct of others, not Defendants.

Thirteenth Affirmative Defense

(Lack of Standing)

AEI's claims are barred, in whole or in part, because AEI lacks standing to assert any or all of the causes of action alleged in the Complaint.

10 Defendants currently have insufficient knowledge or information on which to form a
11 belief as to whether it may have additional, as yet unstated, affirmative defenses available.
12 Defendants reserve the right to assert additional affirmative defenses in the event discovery
13 indicates that such defenses would be appropriate.

WHEREFORE, Google requests:

16 (a) That AEI take nothing by way of its complaint;

17 (b) That judgment be entered in favor of Defendants and against AEI, and that AEI's

18 action be dismissed in its entirety with prejudice;

19 (c) That Google be awarded the costs of defending against this lawsuit, including

20 reasonable attorneys' fees; and

21 (d) For other such relief as the Court shall deem just and proper.

Dated: June 28, 2004

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: DHk
David H. Kramer

Attorneys for Defendants
Google Inc. and Orkut.com LLC

1 **JURY DEMAND**
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3
4 Defendants demand a jury trial on all claims so triable.
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6 Dated: June 28, 2004
7

8 WILSON SONSINI GOODRICH & ROSATI
9 Professional Corporation
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11 By: 
12 David H. Kramer
13

14 Attorneys for Defendants
15 Google Inc. and Orkut.com LLC
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1 **PROOF OF SERVICE BY MAIL**
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3 I, Deborah Grubbs, declare:

4 I am employed in Santa Clara County. I am over the age of 18 years and not a party to
5 the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill
6 Road, Palo Alto, California 94304-1050.

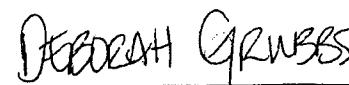
7 I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and
8 processing of correspondence for mailing with the United States Postal Service. In the ordinary
9 course of business, correspondence would be deposited with the United States Postal Service on
10 this date.

11 On this date, I served **ANSWER TO COMPLAINT OF DEFENDANTS GOOGLE**
12 **INC. AND ORKUT.COM LLC** on each person listed below, by placing the document(s)
13 described above in an envelope addressed as indicated below, which I sealed. I placed the
14 envelope(s) for collection and mailing with the United States Postal Service on this day,
15 following ordinary business practices at Wilson Sonsini Goodrich & Rosati.

16 G. Hopkins Guy, III
17 Eric L. Wesenberg
18 Mark R. Weinstein
19 Connie E. Merriett
20 ORRICK, HERRINGTON & SUTCLIFFE LLP
21 1000 Marsh Road
22 Menlo Park, CA 94025

23 Steven R. Manchester
24 MANCHESTER, WILLIAMS & SEIBERT
25 84 West Santa Clara Street
26 Suite 630
27 San Jose, CA 95113-1808

28 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed at Palo Alto, California on June 28, 2004.

29 
30 Deborah Grubbs